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Honorable Judge Marc Barreca
Location: Zoom
Hearing Date: March 23, 2022
Hearing Time: 10:00 a.m.
Response Due: March 16, 2022

IN THE U.S. BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

TIMOTHY DONALD EYMAN,

Debtor.

Chapter 7

Case No. 18-14536-MLB

TRUSTEE'S OBJECTION TO GOODSTEIN
LAW GROUP / RICHARD SANDER'S
FIFTH AND FINAL APPLICATION FOR
COMPENSATION AND CERTIFICATE OF
SERVICE THEREOF

Chapter 7¹ Trustee, Virginia Burdette, through counsel, enters her Objection to the Fifth Application for Compensation (the "Fee Application"), *Dkt. 439*, filed by Richard B. Sanders and the Goodstein Law Group (hereafter collectively "GLG").

First, issues with disclosure by GLG required under §329 and FRBP 2016 require a denial of the compensation sought in the Fee Application. Second, GLG has failed to explain why the requested fees were necessary or expected to benefit the bankruptcy estate. Finally, fees should be denied on the basis that GLG ceased to be a disinterested party when it attempted to secure the Second and Third fee awards against property of the estate.

¹ Unless otherwise specified, all chapter and section references are to the United States Bankruptcy Code, 11 U.S.C. §§101–1532.

OBJECTION TO GLG'S FIFTH AND FINAL
APPLICATION FOR COMPENSATION - 1

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I. FACTUAL BACKGROUND

Debtor Timothy Eyman filed his Chapter 11 bankruptcy on November 28, 2018. *Dkt. 1*. Among the professionals engaged on behalf of the debtor with the approval of this Court, GLG were authorized as special counsel in the bankruptcy by order entered October 16, 2019. *Dkt. 158*. GLG was employed to represent Mr. Eyman in state court litigation brought by the Washington State Attorney General. *Id.*

GLG has sought, and been granted, compensation for its fees and expenses on four previous occasions, in the amounts of \$118,605.52, \$45,445.20, \$218,757.14, and \$36,505.20,² for a total of \$419,313.06. No disclosure of payments has been filed. No disclosure of changes to the prior fee agreement between Debtor and GLG that was approved have been disclosed, and GLG failed to report to this Court that the orders approving GLG's second and third fee applications were recorded.

GLG's First Application for Compensation was filed February 12, 2020. *Dkt. 212*. GLG provides an explanation of work performed, supported by fee records that are in a block-billed format. *Id.* The application states that over \$484,000.00 in unencumbered funds are available for payment of professional fees, and concludes, "interim attorney's fees and costs of \$118,608 shall be paid from the estate funds, which are amply sufficient to pay said interim fees." *Id.* The Financial Statements filed in the Eyman Chapter 11 reveal full payment of the \$118,608.52 following approval of the fees, on or about March 5, 2020. *Dkt. 279*. No disclosure of the actual receipt of fees was made by GLG following payment.

GLG's Second Application for Compensation was filed June 10, 2020. *Dkt. 287*: GLG provides an explanation of work performed, supported by fee records that are, again, in a block-

² *Dkt. 242, 294, 316, 347*, respectively.

1 billed format. *Id.* The application affirmatively states that “there are unencumbered funds in the
2 estate and available to pay Chapter 11 administrative expenses,” and concludes, “interim
3 attorney’s fees and costs of \$45,445.29 *shall be paid* from the estate funds, which are amply
4 sufficient to pay second and final requested fees.” *Id.* (emphasis added). Following the approval
5 of the Second fee request, no disclosure of receipt of fees was made by GLG following payment,
6 and no supplemental statement regarding the payment agreement between the debtor and GLG
7 was filed. Despite the representation that there were unencumbered funds to pay this award,
8 GLG was not paid, resulting in the recording of the order awarding these fees.
9

10 GLG’s Third Application for Compensation was filed on December 30, 2020. *Dkt. 311.*
11 GLG provides an explanation of work performed, supported by fee records that are—yet again—
12 in a block-billed format. *Id.* The application then lists fees previously *granted* to GLG through
13 the First and Second fee requests. *Id.* Conspicuously absent from this third application are
14 amounts of fees *paid* by the estate (as required by LBR 2016-1(2)) or any indication GLG was
15 still owed fees from prior awards. GLG further represents that “the Debtor is current on his post-
16 petition expenses, including taxes and the United States Trustee’s quarterly fees,” skirting the
17 question of whether the Debtor was current on his obligation to pay GLG. The application
18 concludes: “GLG requests an award of interim attorney’s fees and costs of \$218,757.14 shall be
19 paid directly by the debtor for his third and final requested fees and costs.” This representation
20 was made despite the fact that Debtor had not satisfied the smaller award from GLG’s second fee
21 application.
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24 Instead of being paid directly by the Debtor, as had been represented in the Second and
25 Third applications for compensation, GLG recorded the Second and Third Orders approving fees
26 in the Snohomish County Records. The Recording occurred on January 20, 2022, the day after

1 the Third Order was entered. No disclosure was filed, despite the apparent existence of a new
2 agreement under which GLG would forego payment or take an alternative means of payment or
3 security was filed.

4 GLG's Fourth Application for Compensation was filed May 3, 2021. *Dkt. 322*. GLG
5 provides an explanation of work performed, supported by fee records that are—once again—in a
6 block-billed format. The application then lists fees previously *granted* to GLG in the case under
7 the First, Second, and Third fee requests. GLG does not state the amount of fees *paid* by the
8 estate (as required by LBR 2016-1(2)). GLG further represents that “the Debtor is current on his
9 post-petition expenses, including taxes and the United States Trustee’s quarterly fees,” again,
10 skirting the question of whether the Debtor is current on his obligation to pay GLG. The
11 application concludes: “GLG requests an award of interim attorney’s fees and costs of
12 \$36,505.20 shall be paid directly by the debtor for his fourth and final requested fees and costs.”
13

14 The Fourth fee application was granted with the caveat that the Order “shall not be
15 recorded with the Snohomish County Auditor pending further order of the Court.” No disclosure
16 of any payment on the Fourth fee application, nor of any agreement regarding deferred payment,
17 was ever filed by GLG.
18

19 GLG's Fifth Application for Compensation was filed February 24th, 2022. *Dkt. 439*.
20 GLG provides an explanation of work performed, supported by fee records that are, as
21 anticipated, in a block-billed format. The application then lists fees previously *granted* to GLG in
22 the case under the First, Second, and Third fee requests. GLG does not state the amount of fees
23 *paid* by the estate (as required by LBR 2016-1(2)). The application concludes: “GLG request an
24 amount of Chapter 11 attorney’s fees and costs of \$67,852.45.”
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II. ARGUMENT

A. GLG has failed to meet Disclosure Requirements with Detrimental Effect

1. GLG has not made the necessary disclosures under §329(a), FRBP 2016(b) and LBR 2016-1.

Section 329(a) requires a debtor's attorney to:

...[F]ile with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

FRBP 2016(b) implements Section 329(a) by imposing a continuing obligation on a professional of the estate to file a supplemental statement "...within 14 days after any payment or agreement not previously disclosed." Furthermore, Local Bankruptcy Rule 2016-1 requires the disclosure of, *inter alia*, a statement indicating the date prior payments were received, the amount of unencumbered funds in the estate.

The payment history between the debtor and GLG since the firm's employment as Special Counsel in 2020 has suffered from ongoing lack of transparency and disclosure—a deficiency that continues to this day. Disclosure of fees and relationships is dictated by Section 329(a) and FRBP 2016(b), as applied in this district by LBR 2016-1. Disclosure is a continuing obligation, and a debtor's counsel is required to file supplemental statements within 14 days to disclose payments or agreements not previously disclosed. FRBP 2016(b).

2. Non-Compliance with Disclosure Requirements

Disclosures regarding fees must be "explicit and complete." *In re Midway Indus. Contractors*, 272 B.R. 651, 662 (Bankr. N.D. Ill. 2001). "Coy or incomplete disclosures which leave the court to ferret out pertinent information from other sources are not sufficient." *Id.*

1 (quoting *In re Saturley*, 131 B.R. 509, 517 (Bankr. D. ME. 1991). The disclosure requirements of
2 imposed on debtor's attorneys are mandatory, not permissive, and any attorney who fails to
3 comply with the disclosure requirements forfeits any right to receive compensation. *Pugeot v.*
4 *United States Trustee (In re Crayton)*, 192 B.R. 970, 981 (B.A.P. 9th Cir. 1996). "The disclosure
5 requirements are applied literally, even if the results are sometimes harsh." *Neben & Starrett,*
6 *Inc. v. Chartwell Financial Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 881 (9th Cir. 1995).
7 Even negligent or inadvertent failures to disclose fully relevant information in a FRBP 2016
8 statement can result in denial of all requested fees. *Id.* at 882. The extent to which compensation
9 should be denied rests within the Court's discretion. *Id.* A bankruptcy court may deny attorney
10 fees completely when disclosure is lacking.³ *Law Offices of Nicholas A. Franke v. Tiffany (In re*
11 *Lewis)*, 113 F.3d 1040, 1040, 1045 (9th Cir. 1995).

13 At the most basic procedural level, GLG has failed to file the required disclosures under
14 FRBP 2016(b) and LBR 2016-1. GLG's course of action—including attempting to secure its fees
15 against the debtor's home—is a new and undisclosed agreement regarding the expectations for
16 payment of its fees. The Court and interested parties have been kept in the dark by GLG's
17 deficient fee applications and undisclosed payment arrangements. This lack of disclosure has
18 impacted the administration of this bankruptcy estate. Had GLG followed the disclosure
19 requirements regarding fees, and had GLG's fee applications transparently stated how much of
20 the approved fees had or had not been paid, there is no doubt that the State of Washington, this
21 Court, and other interested parties would have become aware of the debtor's nascent default far
22 sooner—possibly as early as July 2020, and certainly by December 2020, when the Third fee
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25 _____
26 ³ Though disgorgement of fees is permissible remedy for failure to meet disclosure requirements,
the remedy of disgorgement is beyond the scope of remedies available at this time.

1 application was filed. This utter lack of transparency regarding the debtor's non-payment and
2 the alternate payment arrangement (recordation of the Orders against estate property) has
3 resulted in significant delay, legal process, and the filing of the pending adversary proceeding
4 *State of Washington v. Eyman, et al., Case Number 21-01041*.

5 For reasons both procedural and substantive, the Trustee opposes GLG's request to be
6 paid the fees sought in its Fifth and Final Application for Compensation. "Because the integrity
7 of the bankruptcy system is at stake, it is absolutely essential that the Court not simply 'excuse'
8 counsel when compliance falls short of that required by the Code and Rules." *In re Coombe*
9 *Farms, Inc.*, 257 B.R. 48, 53-54 (Bankr. D. Idaho 2001).

11 **B. GLG's Vague Entries Do Not Provide Sufficient Detail, and No Narrative Providing**
12 **Such Detail Provides Any Explanation as to the Benefit to the Estate for Services.**

13 Professionals hired by a bankruptcy estate are only entitled to compensation for actual
14 and necessary services. §330(a)(1). Compensation that is not reasonably likely to benefit the
15 estate is not compensable. §330(a)(4). An applicant bears the burden of proof to establish the
16 fees and costs sought were reasonable and likely to provide a benefit to the estate. *In re Esar*
17 *Ventures*, 62 B.R. 204, 205 (Bankr. D. Hawaii 1986).

18 Here, GLG has failed to provide sufficient detail in its billings to determine whether
19 services rendered were likely to benefit the estate, and the Fee Application has no additional
20 information describing the benefit to the expected estate. GLG seems to take for granted that the
21 time consuming and costly appeal must be for the benefit of the estate. Given the amount of fees
22 GLG has been awarded (and is seeking in the Fee Application) it is questionable what benefit the
23 dogged pursuit of the appeal has or will net for the bankruptcy estate. Without benefit to the
24 estate, the fees are not compensable.
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1 **C. GLG’s Action of Recording the Orders Disentitles Them to Further Compensation**

2 Section 328(c) provides:

3 ...[T]he court may deny allowance of compensation for services and
4 reimbursement of expenses of a professional person employed under section
5 327 or 1103 of this title if, **at any time during such professional person’s**
6 **employment** under section 327 or 1103 of this title, such professional
7 person is not a disinterested person, **or represents or holds an interest**
8 **adverse to the interest of the estate** with respect to the matter on which
9 such professional person is employed.

10 (emphasis added). This section requires a professional retained under §327 to *remain*
11 disinterested throughout the duration of his or her employment by the estate.

12 A “disinterested person” means a person that “..is not a creditor, an equity security
13 holder, or an insider...” and one who “...does not have an interest materially adverse to the
14 interest of the estate...by reason of any direct or indirect relationship to, connection with, or
15 interest in, the debtor, or for any other reason.” §101(14)(A) and (C).

16 The accepted definition of “...‘adverse interest’ is the (1) possession or assertion of an
17 economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession
18 or assertion of an economic interest that would create either an actual or potential dispute in
19 which the estate is a rival claimant....” *AFI Holding, Inc.*, 530 F.3d 832, 845 (9th Cir. 2008). The
20 breadth of these terms has been read as sufficient to exclude a professional who holds an interest
21 or relationship that “...‘would even faintly color the independence and impartial attitude required
22 by the Code.’” *See AFI Holding*, 530 F.3d at 846 (quoting *Kravit, Gass & Weber, S.C. v. Michel*
23 *(In re Crivello)*, 134 F.3d 831, 835 (7th Cir.1998).

24 Failure to disclose to the Court that a professional is a “significant creditor” compounds
25 an already questionable position through lack of transparency. In a comparable case, *In re*
26 *Combe Farms, Inc.*, debtor’s counsel failed to timely file the required fee disclosure. *See*

1 generally, 257 B.R. 48 (Bankr. D. Idaho 2001). Upon bringing his fee application, facts emerged
2 revealing that the debtor company's principals had agreed to personally pay the debtor's attorney
3 for remaining fees on the debtor's prior case and had secured the debt with a lien on their house.
4 In a written opinion, the attorney's fees were reduced in light of the failure to disclose and the
5 lack of disinterestedness. *Id.* at 54. Here, GLG's attempt to secure fees by an encumbrance on
6 property of the estate is an even more clear departure from "disinterested" behavior on the part of
7 estate professionals.
8

9 GLG's recording of the Orders created a "material adverse interest," as demonstrated by
10 the *actual* dispute in which the estate is a rival claimant, i.e., the suit filed by the State of
11 Washington. GLG's affirmative action to record the prior fee orders resulted in taking a
12 materially adverse interest, and should result in denial of compensation from the date of
13 recording forward under §328(c).
14

15 III. CONCLUSION

16 For the reasons stated herein, the Trustee respectfully requests this Court reduce or deny
17 fees requested by GLG. Furthermore, the Trustee joins in the State of Washington's objection to
18 the Fee Application at Dkt. 444.

19 Respectfully submitted this 16th day of March 2022.

20 **SCHWEET LINDE & COULSON, PLLC**

21 /s/Michael M. Sperry

22 Michael M. Sperry, WSBA#43760

23 Thomas S. Linde, WSBA#14426

24 Latife H. Neu, WSBA#33144

25 Attorneys for Virginia Burdette, Chapter 7 Trustee
26

CERTIFICATE OF SERVICE

I, Michael M. Sperry, hereby certify that, on the date below, a true and correct copy of the foregoing document will be delivered to the following by the Court's CM/ECF system:

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[SERVICE PARTIES CONTINUE ON NEXT PAGE]

OBJECTION TO GLG'S FIFTH AND FINAL
APPLICATION FOR COMPENSATION - 10

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7 Signed at Kent, Washington on March 16, 2022.

8 /s/ **Michael M. Sperry**
9 Michael M. Sperry

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OBJECTION TO GLG'S FIFTH AND FINAL
APPLICATION FOR COMPENSATION - 11

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